

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CHRIS UMBERGER,

Plaintiff,

v.

CIVIL ACTION NO. 5:09-cv-00607

CORRECTION OFFICER TAYLOR, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On this day, the above-styled matter came before the Court for consideration of the Proposed Findings and Recommendation of United States Magistrate Judge R. Clarke VanDervort.¹ On March 1, 2010, Magistrate Judge VanDervort submitted Proposed Findings and Recommendation (Document No. 6) wherein it is recommended that this Court dismiss the Petitioner's case without prejudice for failure to prosecute.


The Court has reviewed the Petitioner's pro-se, letter-form Complaint (Document No. 1) and this Court's June 5, 2009 Order (Document No. 3).² For good cause shown and without objection, the Court does hereby **ADOPT** and incorporate herein the findings of the Magistrate Judge as

¹ By *Standing Order* (Document No. 2) entered on June 3, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

² The Court ordered Petitioner, within thirty (30) days, to "file, if he wishes, the form Complaint specifying, among other things, the Defendant(s) in his Bivens action and [to] stat[e] his claims[]" and to "either pay the \$350.00 filing fee or file the Application to Proceed *in Forma Pauperis* and other documents as required by 28 U.S.C. § 1915(a)(1) and (2)." *Id.* at 4. (footnote omitted). Petitioner has not complied with the Court's order.

contained in the Proposed Findings and Recommendation.³ Further, the Court does hereby **ORDER** Petitioner to show good cause for the retention of this action on the Court's docket, within thirty (30) days from the entry of this order. In the absence of such a showing, pursuant to Rule 41.1 of the Local Rules, this case will be dismissed without prejudice and removed from the Court's docket. The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 20, 2010



IRENE C. BERGER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

³ Objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation (PF&R) were due within seventeen (17) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P.6(d), 72(b)(2). The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Objections to the PF&R in this case were due on March 18, 2010. No objections were filed.